

House Daily Reader

Monday, February 13, 2012

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State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

853T0242

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1080** - 2/9/2012

Introduced by: Representatives Olson (Betty), Jensen, Russell, and Venner and Senators
Maher, Rhoden, and Sutton

1 FOR AN ACT ENTITLED, An Act to waive certain licensure requirements to hunt fox and
2 coyote with firearms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-6-23 be amended to read as follows:

5 41-6-23. Except as provided in this section, it is a Class 2 misdemeanor for any person to
6 hunt, take, kill, or trap fur-bearing animals without a license to take fur-bearing animals or in
7 violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

8 A license to take fur-bearing animals permits the licensee to set or operate a trap or traps,
9 hunt, catch, take, trap, or kill fur-bearing animals, except the black-footed ferret, to the extent
10 and in the manner provided in §§ 41-8-20 to 41-8-26, inclusive.

11 ~~A~~ No license to take fur-bearing animals is ~~not~~ required for residents or nonresidents to hunt
12 raccoon, skunk, badger, jackrabbit, fox, and coyote with firearms. A license to take fur-bearing
13 animals is not required for residents to trap raccoon, skunk, badger, jackrabbit, fox, and coyote
14 between April first and August thirty-first.



1 Section 2. That subdivision (21) of § 41-1-1 be amended to read as follows:

2 (21) "Predator/varmint," ~~coyote, gray fox, red fox, skunk,~~ gopher, ground squirrel,

3 chipmunk, jackrabbit, marmot, porcupine, crow, and prairie dog;

4

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

572T0399

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1111** - 2/9/2012

Introduced by: Representatives Verchio, Fargen, Feickert, Gosch, Hansen (Jon), Kopp, Miller, Olson (Betty), Russell, and Schaefer and Senators Rampelberg, Frerichs, Kraus, Rhoden, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of eminent
2 domain by certain nongovernmental entities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Condemn," to take property under the power of eminent domain;

6 (2) "Condemnee," a person who has or claims an interest in property that is the subject
7 of a prospective or pending condemnation action;

8 (3) "Condemnor," a railroad as defined in subdivision 49-16A-1(5) or a utility
9 constructing a pipeline transmission line as defined in subdivision 49-41B-2.1(2) that
10 may exercise the right of eminent domain in acquiring right-of-way as prescribed by
11 statute.

12 Section 2. A condemnor shall apply for and be successfully granted any controlling federal
13 or state order, permit, or authority uniquely required for pipeline or railroad construction as the
14 case may be for construction, laying, relaying, operation, and maintenance of any such railroad



1 or pipeline or the location of any plant or equipment necessary to operate such railroad or
2 pipeline prior to commencing action to condemn property.

3 Section 3. A condemnor shall attempt to acquire property by good faith negotiation as
4 described in section 4 of this Act prior to commencing action to condemn property.

5 Section 4. For purposes of this Act, good faith negotiation includes:

6 (1) A written notice. The condemnor shall submit, by certified mail, a written notice to
7 the condemnee prior to making an initial offer. The notice shall include:

8 (a) A description of the proposed project;

9 (b) A description of the total land proposed to be condemned for the proposed
10 project;

11 (c) A description of the plan of work, operations and facilities in a manner
12 sufficient to enable the condemnee to evaluate the effect of the proposed
13 project, plan of work, operations and facilities on the condemned's use of the
14 land, to the extent reasonably known at the time;

15 (d) A description of the general location and extent of the condemnee's property
16 sought, with sufficient detail for reasonable identification;

17 (e) A statement that, at the condemnee's request, a representative of the
18 condemnor will tour the property sought with the condemnee or the
19 condemnee's representative at a mutually agreeable time thirty days or less
20 after the condemnor's initial written offer is received to discuss issues related
21 to properties sought;

22 (f) An estimate of the fair market value of the property sought and the general
23 basis for such estimate; and

24 (g) A description of the reclamation planned by the condemnor for the property

1 disturbed by the condemnor's project;

2 (2) A bona fide initial offer to acquire the property sought. The condemnor shall submit
3 the offer by certified mail to the condemnee. The offer shall be accompanied by
4 written notice that the condemnee is under no obligation to accept this initial written
5 offer, but if the condemnee fails to respond to the initial written offer, the right to
6 object to the good faith of the condemnor may be waived, and that the condemnee
7 has a right to seek advice from an attorney, real estate appraiser, or any other person
8 of the condemnee's choice during the negotiations and any subsequent legal
9 proceedings;

10 (3) A counter offer. The condemnee may make a counteroffer in writing within ninety
11 days of the initial offer specified in section 5 of this Act specifying areas of
12 disagreement; and

13 (4) A response. The condemnor may accept the counteroffer, if made, or shall make a
14 final offer including a response to any areas of disagreement indicated by the
15 condemnee. The final offer shall be sent by certified mail at least thirty days prior to
16 commencing a condemnation action.

17 Section 5. A condemnee may request one appraisal be performed prior to the deadline for
18 a counteroffer as described in subdivision (3) of section 4 of this Act by an appraiser chosen by
19 the condemnee. The condemnor shall pay for such appraisal.

20 Section 6. No action to condemn property may be maintained over timely objection by the
21 condemnee unless the condemnor completed good faith negotiations with the condemnee as
22 described in section 4 of this Act to acquire the property by purchase before commencing the
23 condemnation action. No condemnee may object to the good faith of the condemnor if the
24 condemnee has failed to respond to an initial written offer as provided in section 4 of this Act

1 and the condemnor has met the requirements of section 4 of this Act.

2 Section 7. Notwithstanding the provisions of chapter 21-35, within thirty days from the date
3 the summons described in § 21-35-9 is served, the defendant may demand a hearing in circuit
4 court on the petitioner's right to take. At this hearing, the condemnor shall prove the following:

5 (1) That the condemnor completed good faith negotiations with the condemnee as
6 defined in section 4 of this Act;

7 (2) That the condemnor executed purchase or easement agreements with landowners
8 controlling at least ninety percent of the requisite land, if more than ten landowners
9 are involved;

10 (3) That the condemnor has complied with section 2 of this Act; and

11 (4) That the condemnee's property is necessary for the project.

12 Failure to make such demand or to consent in writing to the taking, within the thirty-day
13 period, constitutes a waiver of the right to question the necessity of the taking. The finding of
14 necessity by the plaintiff, unless based upon fraud, bad faith, or an abuse of discretion, shall be
15 binding on all persons.

16 Section 8. Any easement authorized by the provisions of this Act terminates if the property
17 is not used by the condemnor for a period of three years, if the property is transferred for a use
18 where the transferee could not have condemned for the new use of the property, or if the new
19 use of the property is not identical to the original use and new damages to the condemnee will
20 occur. In such case the property shall be restored as much as possible by the condemnor to the
21 condition before condemnation or the condemnor shall pay the condemnee for any cost to
22 restore the property to the property's condition before condemnation.

23 Section 9. That § 49-16A-75 be amended to read as follows:

24 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way

1 as provided by statute, but only upon obtaining authority from the Governor or if directed by the
2 Governor, or the commission, based upon a determination by the Governor or the commission
3 that the railroad's exercise of the right of eminent domain would be for a public use consistent
4 with public necessity. The Governor or the commission shall consider the requirements of
5 §§ 49-16A-75.1 to 49-16A-75.3, inclusive, when granting or denying an application for
6 authority to use eminent domain. The decision to grant or deny an application shall be made
7 after reasonable notice and opportunity to be heard, pursuant to chapter 1-26. However, an
8 impartial hearing examiner may be appointed by the Governor or the commission to administer
9 the proceedings or make recommendations. Any parties who are united in interest or
10 representation shall unite in the filing of an affidavit for change of hearing examiner under the
11 provisions of § 1-26D-10. The filing of such affidavit by one party is deemed to be filed by all
12 of the parties. No more than one change of hearing examiner may be granted on request or
13 affidavit made by or on behalf of the same party or parties united in interest under the provisions
14 of § 1-26D-10. However, the filing of an affidavit and the first change of hearing examiner does
15 not prevent any other party to the action or any party's attorney from obtaining a change in
16 hearing examiner upon a showing of an unacceptable risk of actual bias or prejudice concerning
17 a party. The Governor or the chair of the commission shall replace the hearing examiner within
18 five business days upon any recusal. A hearing shall be held and a decision rendered on any
19 application within ninety days following the receipt of a new application and upon any
20 application pending before the Governor or the commission on July 1, 2008.

21 —The denial or withdrawal of an application does not prejudice the ability of a railroad to
22 resubmit an application. Any appeal, pursuant to chapter 1-26, taken from a decision of the
23 Governor or the commission shall be handled as an expedited appeal by the courts of this state.

24 Section 10. That § 49-16A-75.1 be repealed.

1 ~~49-16A-75.1. The commission shall in accordance with chapter 1-26, promulgate rules:~~

2 ~~(1) Establishing a form upon which a railroad may apply for authority to exercise the~~
3 ~~right of eminent domain;~~

4 ~~(2) Specifying the information to be submitted by an applicant; and~~

5 ~~(3) Administering applications for authority to exercise the right of eminent domain.~~

6 Section 11. That § 49-16A-75.2 be repealed.

7 ~~49-16A-75.2. The applicant has the burden of proving by a preponderance of the evidence~~
8 ~~that the exercise of the right of eminent domain is a public use consistent with public necessity.~~

9 Section 12. That § 49-16A-75.3 be repealed.

10 ~~49-16A-75.3. A railroad's exercise of the right of eminent domain is a public use consistent~~
11 ~~with public necessity only if the use of eminent domain is proposed by an applicant who has~~
12 ~~negotiated in good faith to privately acquire sufficient property without the use of eminent~~
13 ~~domain. No determination of public use or necessity or any other issue properly decided by the~~
14 ~~Governor or the commission may be addressed by the circuit court in an action for~~
15 ~~condemnation. Such a determination may only be challenged upon direct appeal of that~~
16 ~~determination. Notwithstanding appeal of such determination, the railroad may proceed at any~~
17 ~~time by action in circuit court for possession and determination of compensation for any real~~
18 ~~property taken or damaged.~~

19 Section 13. That § 49-16A-75.4 be repealed.

20 ~~49-16A-75.4. Upon a failure to reach agreement on compensation following a determination~~
21 ~~pursuant to § 49-16A-75.3, either party may bring a proceeding in state court to establish~~
22 ~~compensation to be paid for the property taken or damaged. The court shall expedite the~~
23 ~~proceedings. A railroad is not entitled to physical possession of the property to be taken~~
24 ~~pursuant to the exercise of eminent domain except upon the earlier to occur of either:~~

- 1 ~~(1) Execution of a written agreement between the parties as to fair market value of~~
2 ~~compensation;~~
- 3 ~~(2) Entry of a judgment of condemnation in the circuit court; or~~
- 4 ~~(3) Upon posting by the railroad of a bond to be established by the court as soon as~~
5 ~~possible but no later than one hundred twenty days following petition by the railroad~~
6 ~~for possession. The bond shall be in an amount the court determines to be a~~
7 ~~preliminary estimate of compensation based on the best information available, but~~
8 ~~is not determinative of final compensation or admissible as evidence thereon.~~

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

861T0125

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1179** - 2/9/2012

Introduced by: Representatives Kirkeby, Brunner, Deelstra, and Munsterman and Senators
Lederman, Juhnke, Peters, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to require certain campaign finance requirements to apply
2 to all counties and municipalities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-27-39 be amended to read as follows:

5 12-27-39. The provisions of this chapter apply to each statewide office, legislative office,
6 statewide ballot question, county offices and ballot questions in counties with population greater
7 than five thousand according to the most recent Federal census, ballot questions in first class
8 municipalities, and school district offices and ballot questions in school districts with more than
9 two thousand average daily membership. Any municipal or school district election covered by
10 this chapter shall conform to the contribution limits applicable to legislative offices. This
11 chapter does not apply to the unified judicial system, nor does this chapter apply to any
12 township, ~~municipal~~, or special purpose district offices or ballot questions or elections for
13 municipal offices. However, the governing body of any county, township, municipality, school
14 district, or special purpose district not otherwise covered by this chapter may adopt an ordinance



1 or resolution to make the provisions of this chapter, with or without amendments, applicable to
2 ~~county~~, township, ~~municipal~~, school district, or special purpose district elections.

3 Section 2. That § 12-27-40 be amended to read as follows:

4 12-27-40. The state's attorney shall investigate any violation of the provisions of this chapter
5 relating to elections for county and school district office or county, municipal, or school district
6 ballot questions, and prosecute any violation thereof. In lieu of bringing a criminal action, the
7 state's attorney may elect to file a civil action for any violation of this chapter. In a civil action,
8 in addition to other relief, the court may impose a civil penalty in an amount not to exceed one
9 thousand dollars for each violation. Any civil penalty recovered shall be paid to the county
10 general fund if the violation arose out of a county office or ballot question, municipal general
11 fund if the violation arose out of a municipal ballot question, or the school district general fund
12 if the violation arose out of a school district office or ballot question. A civil enforcement action
13 for a violation of the chapter concerning a municipal ballot question may, with the consent of
14 the state's attorney, be brought by the municipality's attorney. A civil enforcement action for a
15 violation of the chapter concerning a school district office or ballot question may, with the
16 consent of the state's attorney, be brought by the school district's attorney. A civil action brought
17 under this section shall be commenced in the county where filings under the chapter are
18 required, in the county where the person resides, or in the county where the organization,
19 political party, or political committee has its principal office.

20 Section 3. That § 12-27-42 be amended to read as follows:

21 12-27-42. Any statement, form, or filing required by this chapter shall be filed with the
22 secretary of state in the case of a statewide office or legislative office election. Any statement,
23 form, or filing required by this chapter shall be filed with the county auditor in the case of a
24 county office election, with the municipal finance officer or clerk in the case of a municipal

1 ballot question election, with the school business manager in the case of a school district office
2 election, or with the person in charge of the election in the case of other political subdivisions
3 or special purpose districts. However, any county, municipality, school district, or other political
4 subdivision may, by resolution, direct that any statement, form, or filing required by this chapter
5 be electronically filed with the secretary of state, rather than being filed with the county,
6 municipality, school district, or other political subdivision.

7 Section 4. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Nothing in this chapter prevents any political subdivision from adopting additional standards
10 or requirements relating to campaign finance for elections held under the political subdivision's
11 own jurisdiction that are more stringent than the provisions of this title.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

645T0558

HOUSE TAXATION ENGROSSED NO. **HB 1209** - 2/9/2012

Introduced by: Representatives Romkema, Turbiville, and Venner and Senator Nelson (Tom)

1 FOR AN ACT ENTITLED, An Act to exempt certain parts and components used in the
2 construction of homebuilt aircraft from sales and use taxes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 There are hereby exempted from the provisions of this chapter and the computation of the
7 tax imposed by it, the gross receipts from the sale of aircraft kits, engines, instruments, and other
8 parts or components used in the construction of homebuilt aircraft. However, this exemption
9 does not apply to the repair or maintenance of homebuilt aircraft. For the purposes of this
10 section, the term, homebuilt aircraft, means any aircraft manufactured by any person other than
11 a bona fide manufacturer.

12 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 There are hereby exempted from the provisions of this chapter and the computation of the
15 tax imposed by it, the use of aircraft kits, engines, instruments, and other parts or components



1 used in the construction of homebuilt aircraft. However, this exemption does not apply to the
2 repair or maintenance of homebuilt aircraft. For the purposes of this section, the term, homebuilt
3 aircraft, means any aircraft manufactured by any person other than a bona fide manufacturer.

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0575

HOUSE EDUCATION ENGROSSED NO. **HB 1234** - 2/9/2012

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Education at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for rewards for the best teachers and those
2 teaching in math and science subject areas, to revise certain provisions regarding evaluation
3 of teachers, to create a system for evaluating principals, to distinguish between tenured and
4 nontenured teachers, to revise certain provisions regarding the employment of teachers, and
5 to repeal provisions regarding the teacher compensation assistance program.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. Beginning in the 2013-2014 school year, there is hereby created the math and
8 science teacher incentive program within the Department of Education to provide funds to
9 public school districts for the purpose of providing rewards to attract certified teachers who
10 teach in math and science subject areas in middle school and high school or who are certified
11 with a math or science specialist endorsement which they are utilizing for any grade,
12 kindergarten through twelve. By January 31, 2013, the South Dakota Board of Education shall
13 promulgate rules pursuant to chapter 1-26 establishing which courses qualify as math and
14 science courses for purposes of the program. For purposes of this Act, math and science courses



1 are those courses established by the Board of Education pursuant to this section. For purposes
2 of this Act, middle school is a school consisting of any combination of two or more consecutive
3 grades, five to eight, inclusive, and high school is a school consisting of any combination of
4 three or more consecutive grades, including ninth grade to twelfth grade, inclusive.

5 Section 2. Participation in the math and science teacher incentive program is voluntary for
6 teachers, and incentive rewards are to supplement but not replace what a teacher receives under
7 a contract between the teacher and the school district or a collective bargaining agreement
8 between a district and the district's teachers. No collective bargaining agreement between a
9 district and the district's teachers may limit the ability of a teacher to qualify for or receive an
10 incentive reward. Nothing in sections 1 to 6, inclusive, of this Act is intended to create a
11 contractual right or property right in the math and science teacher incentive program.

12 Section 3. The Department of Education shall provide application forms for teachers
13 wishing to participate in the math and science teacher incentive program. A teacher wishing to
14 participate in the program shall complete and sign the form and provide the form to the business
15 office of the school district by the close of business on October first of the teacher's first year
16 of teaching, pursuant to the requirements of section 4 of this Act, to be eligible for the program.
17 A teacher does not need to reapply each year unless the teacher switches employment to another
18 school district. Completed applications are a public record pursuant to chapter 1-27, but
19 personal information in the applications may be redacted as allowed by that chapter.

20 Section 4. To be eligible for the math and science teacher incentive program, a teacher shall
21 fulfill the following requirements:

22 (1) Comply with section 3 of this Act;

23 (2) In the 2013-2014 school year or a subsequent school year, be in the teacher's first
24 year of:

1 (a) Teaching math or science courses in middle school or high school; or

2 (b) Utilizing a math or science specialist endorsement for any grade, kindergarten
3 through twelve;

4 (3) Be in full time status for the entire school year; and

5 (4) If subsection (2)(a) applies, the teacher must also be assigned to teach math or
6 science courses, or a combination of such courses, in middle school or high school
7 for at least fifty-one percent of a full-time equivalent position's assignments
8 submitted in the annual teacher data collection pursuant to § 13-3-51 and any rules
9 promulgated pursuant thereto, and be currently certified with a middle school or high
10 school endorsement to teach each course.

11 No teacher shall be eligible for the math and science teacher incentive program for more
12 than a total of five years.

13 Section 5. By March first of each year, the school board of each district shall submit to the
14 Department of Education a copy of the application of each teacher eligible for the math and
15 science teacher incentive program for the current school year pursuant to the requirements of
16 this Act. The Department of Education may require additional information from the district as
17 necessary to verify each teacher's eligibility for the reward. The department may refuse to issue
18 a reward for any teacher for whom the information required by this section is not provided by
19 the deadline.

20 Section 6. The amount of the reward under the math and science teacher incentive program
21 is nine thousand four hundred twenty-five dollars per eligible teacher to be distributed as
22 described in this section. No later than May first of each year, at the same time that foundation
23 program state aid is distributed to school districts pursuant to §§ 13-13-10.1 to 13-13-41,
24 inclusive, the secretary of the Department of Education shall distribute funds for the math and

1 science teacher incentive program for teachers that qualify pursuant to this Act. These funds
2 shall be distributed in lump sum payments.

3 Subject to the requirements of this Act, the department shall pay to the school district nine
4 thousand four hundred twenty-five dollars per eligible teacher in that district. Within thirty days
5 of receipt from the department, the school district shall distribute the funds as follows:

6 (1) Eight thousand dollars shall be paid to each eligible teacher in the district; and

7 (2) One thousand four hundred twenty-five dollars may be retained by the district to pay
8 the district's share of applicable federal taxes, the district's share of contribution to
9 the South Dakota Retirement System, and administrative costs.

10 Section 7. Beginning in the 2014-2015 school year, there is hereby created the top teachers
11 reward program within the Department of Education to provide funds to public school districts
12 for the purpose of providing top teacher rewards for certified teachers.

13 Section 8. Participation in the top teachers reward program is voluntary for teachers, and
14 such rewards shall supplement but not replace what a teacher receives under a contract between
15 the teacher and the school district or a collective bargaining agreement between a district and
16 the district's teachers. No collective bargaining agreement between a district and the district's
17 teachers may limit the ability of a teacher to qualify for or receive a top teacher reward. Nothing
18 in sections 7 to 15, inclusive, of this Act is intended to create a contractual right or property
19 right in the top teachers reward program.

20 Section 9. In each school year, up to twenty percent of each school district's full-time
21 equivalent certified teaching positions, as measured by the district's annual teacher data
22 collection pursuant to § 13-3-51 and any rules promulgated pursuant to that section, shall be
23 eligible to receive a top teacher reward, subject to the requirements of this Act. The Department
24 of Education shall multiply the number of full-time equivalent certified teaching positions in

1 the district by twenty percent. If this calculation results in a fraction, the maximum number of
2 eligible positions may not exceed the next lowest whole number. If there are fewer than five
3 full-time equivalent certified teaching positions in a school district, the maximum number of
4 eligible positions shall be one.

5 Section 10. No later than May first of each year, at the same time that foundation program
6 state aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the
7 secretary of the Department of Education shall inform each school district of the number of
8 eligible positions in that district for the current school year, based on the calculation in section
9 9 of this Act, and distribute to each school district five thousand seven hundred dollars per
10 eligible position. These funds shall be distributed in lump sum payments. The school district
11 shall retain these funds until distribution pursuant to section 11 of this Act.

12 Section 11. No later than September first of each year, the school district shall distribute the
13 funds received pursuant to section 10 of this Act as follows:

- 14 (1) Five thousand dollars shall be paid to each teacher selected for a top teacher reward
15 pursuant to section 14 of this Act for the previous school year; and
16 (2) Seven hundred dollars may be retained by the district to pay the district's share of
17 applicable federal taxes, the district's share of contribution to the South Dakota
18 Retirement System, and administrative costs.

19 Any funds received pursuant to section 10 of this Act which are not distributed according
20 to this section shall be returned to the Department of Education within thirty days.

21 Section 12. The Department of Education shall provide application forms for teachers
22 wishing to participate in the top teachers reward program. A teacher wishing to participate in
23 the program shall complete and sign the form and provide the form to the business office of the
24 school district by the close of business on October first to be eligible for the program for that

1 school year. A teacher wishing to participate shall submit a new application for each school
2 year. Completed applications are a public record pursuant to chapter 1-27, but personal
3 information in the applications may be redacted pursuant to that chapter.

4 Section 13. A participating teacher shall be full-time and receive a distinguished rating, as
5 referenced in section 28 of this Act, on the teacher's most recent evaluation to be eligible for a
6 top teacher reward. In addition, a distinguished teacher's selection for the reward may be based
7 on consideration of the following factors as determined by the school board:

- 8 (1) Mentoring of less experienced teachers;
- 9 (2) Curriculum development;
- 10 (3) Assessment development;
- 11 (4) Data analysis;
- 12 (5) Service to the local district, state, or national committees or task forces;
- 13 (6) Leadership in a professional learning community;
- 14 (7) National board certification;
- 15 (8) Other leadership activities or recognitions; and
- 16 (9) Other additional criteria as determined by the school board.

17 Section 14. No later than August first of each year, the school board of each school district
18 shall determine which participating teachers, if any, are selected to receive top teacher rewards
19 for the previous school year according to the criteria in section 13 of this Act. The number of
20 teachers selected may not exceed the number of eligible positions referenced in sections 9 and
21 10 of this Act.

22 Section 15. Department of Education may require each school district to provide any
23 information necessary to verify the district's compliance with sections 10 to 14, inclusive, of this
24 Act. Upon a finding of noncompliance, the department may require the district to return any

1 funds distributed contrary to the requirements of this Act.

2 Section 16. Notwithstanding any other provisions of this Act, public school districts may
3 opt out of the top teacher reward program by providing written notice to the Department of
4 Education. The notice shall be approved by a majority of the school board and signed by the
5 school board president. The department shall provide forms for this purpose. Beginning in 2014,
6 the notice shall be postmarked no earlier than January first, and no later than January thirty-first,
7 of each year in order to be effective for the next school year. The district shall provide a separate
8 form for each school year for which the district desires to opt out. If a school district fails to
9 follow the requirements of this section, the attempt to opt out is void, and the district shall
10 comply with the requirements of the top teacher reward program.

11 If a district opts out pursuant to this section, the teachers employed in the district are not
12 eligible to participate in the top teacher reward program. The district shall provide written notice
13 to each certified teacher of the teacher's ineligibility for the program before executing a teaching
14 contract with the teacher for the school year for which the opt out is effective.

15 School districts may not opt out of the math and science teacher incentive program
16 established pursuant to this Act.

17 Section 17. If a school district opts out pursuant to section 16 of this Act, all funds which
18 the district would have been eligible to receive for the top teacher program pursuant to this Act
19 shall be redistributed as follows:

- 20 (1) To obtain the redistribution amount, the Department of Education shall calculate the
21 number of positions that would have been eligible for the top teacher reward program
22 in each opt out district pursuant to section 9 of this Act, and multiply that calculation
23 by five thousand seven hundred dollars;

- 24 (2) No later than May first of each year, at the same time that foundation program state

aid is distributed to a school district pursuant to §§ 13-13-10.1 to 13-13-41, inclusive, the department shall allocate the redistribution amount, on a pro rata basis, to each public school district that did not opt out of the top teacher reward program or is participating in a local teacher reward program pursuant to sections 18 to 25, inclusive, of this Act. Each district's pro rata share of the redistribution amount shall be based on the number of full-time equivalent certified teacher positions in the district, as measured by the district's annual teacher data collection pursuant to § 13-3-51 and any rules promulgated pursuant to that section; and

(3) No later than September first of each year, the redistribution amount received by each district pursuant to subdivision (2) shall be distributed equally among all teachers receiving top teacher rewards in the district pursuant to sections 7 to 15, inclusive, of this Act, or among all teachers receiving local teacher rewards pursuant to sections 18 to 25, inclusive, of this Act, but each district may withhold an amount necessary to pay the district's share of applicable federal taxes, the district's share of contributions to the South Dakota Retirement System, and administrative costs. Any funds not distributed according to this subdivision shall be returned to the Department of Education within thirty days.

Section 18. Notwithstanding any other provision of this Act, a public school district may create a local teacher reward plan to act as a substitute for the top teacher reward program beginning in the 2014-2015 school year. If the local teacher reward plan is developed in compliance with sections 18 to 25, inclusive, of this Act, the district may utilize the local teacher reward plan to provide the district with the flexibility to use the funds that would otherwise be provided to the district through the top teachers reward program.

Participation in the local teacher reward plan is voluntary. Rewards shall supplement but not

1 replace what a teacher receives under a contract between the teacher and the school district or
2 a collective bargaining agreement between a district and the district's teachers. No collective
3 bargaining agreement between a district and the district's teachers may limit the ability of a
4 teacher to qualify for or receive a local teacher reward. Nothing in sections 18 to 25, inclusive,
5 of this Act, is intended to create a contractual right or property right in local teacher rewards.

6 Teachers in the district may not participate in the top teacher reward program for any school
7 year for which the district has adopted a local teacher reward plan. The district shall provide
8 written notice to each certified teacher of the teacher's ineligibility for the top teacher reward
9 program and provide a copy of the district's local teacher reward plan to each certified teacher
10 before executing a teaching contract with the teacher for the school year for which the local
11 teacher reward plan is effective.

12 Section 19. The local teacher reward plan shall reward certified teachers in the district based
13 upon the following criteria:

- 14 (1) Student achievement and teacher evaluations pursuant to sections 28 to 32, inclusive,
15 of this Act; or
16 (2) Market based needs of the school district based upon local priorities and unique
17 circumstances in the school district.

18 Section 20. There is hereby established the Local Teacher Reward Plan Advisory Council.
19 The council shall provide input in developing one or more model local teacher reward plan
20 applications based upon the criteria in section 19 of this Act. The work group shall consist of
21 the following members:

- 22 (1) Six principals and six superintendents: two each from an elementary school, two each
23 from a middle school, and two each from a high school;
24 (2) Three teachers: one from an elementary school, one from a middle school, and one

1 from a high school; and

2 (3) Two school board members.

3 Section 21. The Board of Education shall promulgate rules, pursuant to chapter 1-26,
4 establishing the application form for the local teacher reward plan, further guidelines for district
5 applications based on the criteria in section 19 of this Act, a system to monitor whether each
6 participating school district is complying with the local teacher reward plan, and penalties for
7 noncompliance.

8 Section 22. There is hereby established the Local Teacher Reward Plan Oversight Board.
9 The board shall consist of the following members:

- 10 (1) One member of the Senate appointed by the president pro tempore of the Senate;
- 11 (2) One member of the House of Representatives appointed by the speaker of the House
12 of Representatives;
- 13 (3) One representative of the business community appointed by the Governor;
- 14 (4) One representative of an educational association appointed by the Governor; and
- 15 (5) One former teacher appointed by the Governor.

16 Section 23. A school district shall submit the local teacher reward plan application to the
17 Department of Education no later than January thirty-first of each year, beginning in 2014, to
18 be eligible to apply the local teacher reward plan to the upcoming school year. The district must
19 submit a separate local teacher reward plan application for each school year.

20 By March fifteenth of each year, the Local Teacher Reward Plan Oversight Board shall
21 review all applications to determine compliance with this Act, and any rules promulgated
22 thereto, and forward the applications to the secretary of education with the board's
23 recommendation. The board or the secretary may request additional information from the district
24 as part of the review of the application. By April first of each year, the secretary shall inform

1 each district whether the district's local teacher reward plan has been approved for the upcoming
2 school year. If the application is denied, the district may not follow a local teacher reward plan
3 and shall comply with the requirements of the top teacher reward program for the upcoming
4 school year.

5 Section 24. If a district's local teacher reward plan is approved, the Department of Education
6 shall calculate the number of positions in the district that would have been eligible for the top
7 teacher reward program pursuant to section 9 of this Act and multiply that calculation by five
8 thousand seven hundred dollars. No later than May first of each year, at the same time that
9 foundation program state aid is distributed to the district pursuant to §§ 13-13-10.1 to 13-13-41,
10 inclusive, the secretary of the Department of Education shall distribute this amount to the
11 district in a lump sum payment.

12 Section 25. No later than September first of each year, the district shall distribute the funds
13 received pursuant to section 24 of this Act to each certified teacher selected for a reward under
14 the local teacher reward program for the previous school year, but the district may withhold an
15 amount necessary to pay the district's share of applicable federal taxes, the district's share of
16 contributions to the South Dakota Retirement System, and administrative costs. Any funds not
17 distributed according to this section shall be returned to the Department of Education within
18 thirty days.

19 Section 26. A teacher may apply for both the math and science teacher incentive program
20 and the top teachers reward program established pursuant to this Act or both the math and
21 science teacher incentive program and the local teacher reward plan established pursuant to this
22 Act.

23 Section 27. That § 13-42-34 be amended to read as follows:

24 13-42-34. Any public school district seeking state accreditation shall evaluate the

performance of each certified teacher in years one ~~through to three, inclusive~~, not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year.

~~Each~~ For the 2012-2013 school year and the 2013-2014 school year, ~~each~~ school district ~~shall~~ may adopt procedures for evaluating the performance of certified teachers employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;
- (2) Require multiple measures;
- (3) Serve as the basis for programs to increase professional growth and development of certified teachers; and
- (4) Include a plan of assistance for any certified teacher, who is in the fourth or subsequent year of teaching, and whose performance does not meet the school district's performance standards.

Section 28. That § 13-42-34 be amended to read as follows:

13-42-34. Any public school district seeking state accreditation shall evaluate the performance of each certified teacher ~~in years one through three not less than annually, and each certified teacher in the fourth contract year or beyond, not less than every other year.~~ Beginning in the 2014-2015 school year, each certified teacher shall be evaluated on an annual basis.

Each school district shall adopt the model evaluation instrument required by section 30 of this Act and procedures for evaluating the performance of certified teachers employed by the school district that:

- (1) Are based on the minimum professional performance standards established by the Board of Education pursuant to § 13-42-33;

(2) Require multiple measures of performance as follows:

(a) Fifty percent of the evaluation of a teacher shall be based on quantitative measures of student growth, based on a single year or multiple years of data. This quantitative data shall be based on reports of student performance on state validated assessments established pursuant to § 13-3-55. For those teachers in grades and subjects for which there is no state-validated assessment for the quantitative portion of the evaluation, teachers shall demonstrate success in improving student achievement using objective measures, which can include portfolio assessments, end-of-course exams, or other district approved assessments which demonstrate student growth; and

(b) Fifty percent of the evaluation of a teacher shall be based on qualitative, observable, evidence-based characteristics of good teaching and classroom practices as further defined in the model evaluation instrument referenced in section 30 of this Act. Districts may collect additional evidence using any of the following if not required by the model evaluation instrument:

(i) Classroom drop-ins;

(ii) Parent surveys;

(iii) Student surveys;

(iv) Portfolios; or

(v) Peer review;

(3) Serve as the basis for programs to increase professional growth and development of certified teachers; and

(4) Include a plan of assistance for any certified teacher, ~~who is in the fourth or subsequent year of teaching, and~~ whose performance does not meet the school

district's performance standards; and

(5) Are based on the following four-tier rating system:

(a) Distinguished;

(b) Proficient;

(c) Basic; and

(d) Unsatisfactory.

Section 29. The provisions of section 28 of this Act are effective July 1, 2014.

Section 30. That § 13-42-35 be amended to read as follows:

13-42-35. A work group appointed by the secretary of education shall provide input in developing the standards for defining the four-tier rating system required by section 28 of this Act and shall develop in developing a model evaluation instrument that ~~may~~ shall be used by school districts for the 2014-2015 school year and subsequent school years. The work group shall consist of the following members:

- (1) Six teachers: two from an elementary school, two from a middle school, and two from a high school;
- (2) Three principals: one from an elementary school, one from a middle school, and one from a high school;
- (3) Two superintendents;
- (4) Two school board members;
- (5) Four parents who have students in various levels of the K-12 system;
- (6) One representative of the South Dakota Education Association;
- (7) One representative of the School Administrators of South Dakota; and
- (8) One representative of the Associated School Boards of South Dakota.

Section 31. That chapter 13-42 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Pursuant to chapter 1-26, the South Dakota Board of Education shall promulgate rules
3 establishing standards for defining the four-tier rating system required by section 28 of this Act
4 and adopting the model evaluation instrument referenced in section 30 of this Act.

5 Section 32. That chapter 3-18 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Beginning with the 2014-2015 school year, the procedures for evaluation and the model
8 evaluation instrument referenced in sections 28 to 31, inclusive, of this Act may not be the
9 subject of any collective bargaining agreement between a district and the district's teachers.

10 Section 33. The Board of Education shall promulgate rules pursuant to chapter 1-26 to
11 establish minimum professional performance standards for certified principals in South Dakota
12 public schools, and to establish best practices for the evaluation of the performance of certified
13 principals that shall be used by individual school districts. The South Dakota Board of
14 Education shall promulgate rules pursuant to chapter 1-26 establishing standards for defining
15 the four-tier rating system required by section 34 of this Act and adopting the model evaluation
16 instrument referenced in section 35 of this Act.

17 Section 34. Beginning in the 2014-2015 school year, any public school district seeking state
18 accreditation shall evaluate the performance of each certified principal not less than every other
19 year.

20 Each school district shall adopt the model evaluation instrument required by section 35 of
21 this Act and procedures for evaluating the performance of certified principals employed by the
22 school district that:

23 (1) Are based on the minimum professional performance standards established by the
24 Board of Education pursuant to section 33 of this Act;

- 1 (2) Require multiple measures of performance;
- 2 (3) Serve as the basis for programs to increase professional growth and development of
- 3 certified principals;
- 4 (4) Include a plan of assistance for any certified principal whose performance does not
- 5 meet the school district's performance standards; and
- 6 (5) Are based on the following four-tier rating system:
- 7 (a) Distinguished;
- 8 (b) Proficient;
- 9 (c) Basic; and
- 10 (d) Unsatisfactory.

11 Section 35. A work group appointed by the secretary of education shall provide input in
12 developing the standards referenced in section 33 of this Act, the four-tier rating system required
13 by section 34 of this Act, and in developing a model instrument for principal evaluation that
14 shall be used by school districts for the 2014-2015 school year and each school year thereafter.
15 The work group shall consist of the following members:

- 16 (1) Six principals: two from an elementary school, two from a middle school, and two
- 17 from a high school;
- 18 (2) Three teachers: one from an elementary school, one from a middle school, and one
- 19 from a high school;
- 20 (3) Two superintendents;
- 21 (4) Two school board members;
- 22 (5) Four parents who have students in various levels of the K-12 system;
- 23 (6) One representative of the South Dakota Education Association;
- 24 (7) One representative of the School Administrators of South Dakota; and

(8) One representative of the Associated School Boards of South Dakota.

Section 36. All persons conducting teacher or principal evaluations required by sections 28 to 35, inclusive, of this Act shall participate in training conducted by the Department of Education before conducting the evaluations.

Section 37. That chapter 13-43 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, tenured teacher, means a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district prior to July 1, 2012. If, prior to July 1, 2012, the school district and the teacher have entered into a contract pursuant to §§ 13-43-4 and 13-43-5 for the teacher's fourth consecutive term of employment with the district or a subsequent consecutive term of employment with the district, then that teacher is a tenured teacher for purposes of this chapter. The term, nontenured teacher, means a teacher who is not yet in or beyond the fourth consecutive term of employment as a teacher with the school district prior to July 1, 2012. Any teacher who is not in or beyond the fourth consecutive term of employment with the school district prior to July 1, 2012, may not acquire continuing contract status under this chapter.

Section 38. That § 13-43-6 be amended to read as follows:

13-43-6. The contract shall specify the date at or about which the school shall begin, the term of employment, the wages per month, and the time of payment thereof, such of wages. The contract shall be signed in duplicate and one copy filed in the office of the business manager and the other retained by the teacher. Such The contract may be issued covering any period of years, ~~not to exceed three~~ employment up to one year, over which a teacher holds a certificate which ~~will~~ shall remain valid without renewal.

Section 39. That § 13-43-6.1 be amended to read as follows:

1 13-43-6.1. A tenured or nontenured teacher may be terminated, by the school board, at any
2 time for just cause, including breach of contract, poor performance, incompetency, gross
3 immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any
4 policy or regulation of the school district. ~~A school district may nonrenew a teacher who is in~~
5 ~~or beyond the fourth consecutive term of employment as a teacher with the school district~~
6 ~~pursuant to § 13-43-6.3 for just cause, including breach of contract, poor performance,~~
7 ~~incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or~~
8 ~~the violation of any policy or regulation of the school district.~~

9 Section 40. That § 13-43-6.2 be amended to read as follows:

10 13-43-6.2. If nonrenewal of a tenured or nontenured teacher is contemplated under ~~§ 13-43-~~
11 ~~6.1~~ § 13-43-6.3, the superintendent or chief executive officer shall give written notice of an
12 intention to recommend nonrenewal to the teacher and the school board; a written statement of
13 the reasons for the recommendation for any tenured teacher; access to the employment records
14 of the teacher; the opportunity to the teacher for a hearing ~~before the school board~~ to present
15 reasons in person or in writing why the nonrenewal should not occur; and the opportunity to be
16 represented. The teacher shall request the hearing as provided in § 13-43-6.9. The school board
17 shall contract with the Office of Hearing Examiners pursuant to § 1-26D-11 to conduct the
18 hearing not sooner than fourteen days, nor later than forty-five days, after receipt of the teacher's
19 request for hearing. The parties may waive the time limitations provided for in this section. The
20 hearing examiner, after hearing evidence in the matter, shall make proposed findings of fact and
21 conclusions of law, and a proposed decision. The superintendent or chief executive officer, with
22 the consent of the school board, may accept or reject the decision of the hearing examiner, and
23 the decision of the superintendent or chief executive officer is final without further action. The
24 school district and the teacher requesting the hearing shall each pay half of the cost of the

1 services provided by the Office of Hearing Examiners.

2 Section 41. That § 13-43-6.3 be amended to read as follows:

3 13-43-6.3. ~~Until a teacher is in or beyond the fourth consecutive term of employment as a~~
4 ~~teacher with the school district, a~~ A school board may or may not renew the teacher's contract
5 of a nontenured teacher. The superintendent or chief executive officer shall give written notice
6 of nonrenewal by April fifteenth but is not required to give ~~further process or~~ a reason for
7 nonrenewal.

8 ~~After a teacher is in or beyond the fourth consecutive term of employment as a teacher with~~
9 ~~the school district, §§ 13-43-6.1 and 13-43-6.2 apply to any nonrenewal of the teacher's contract.~~
10 A school board may refuse to renew the teacher's contract of a tenured teacher for just cause,
11 including breach of contract, poor performance, a rating of unsatisfactory on two consecutive
12 evaluations pursuant to section 28 of this Act, incompetency, gross immorality, unprofessional
13 conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the
14 school district. On or before April fifteenth, the superintendent or chief executive officer shall
15 notify the tenured teacher and the school board in writing of the recommendation to not renew
16 the teacher's contract.

17 Acceptance by ~~the~~ a tenured or nontenured teacher of an offer from the district to enter into
18 a new contract with the teacher shall be in the manner specified in the offer. Failure of the
19 teacher to accept the offer in the manner specified constitutes the termination of the existing
20 contract between the teacher and the district at the end of its term.

21 Section 42. That § 13-43-6.4 be amended to read as follows:

22 13-43-6.4. Notwithstanding ~~§§ 13-43-6.1 to §§ 13-43-6.2 and~~ §§ 13-43-6.2 and 13-43-6.3, ~~inclusive,~~ if a
23 teacher's contract is not renewed due to a reduction in staff, only written notice is required,
24 which shall be provided by the school board to the teacher by April fifteenth.

Section 43. That § 13-43-6.6 be amended to read as follows:

13-43-6.6. Although a collective bargaining agreement between a district and its teachers may set forth specific additional grounds for termination or set forth provisions as to the procedure or notice, no agreement may limit the district's right to terminate or refuse to renew the contract of a tenured or nontenured teacher for the grounds set forth in §§ 13-43-6.1 to 13-43-6.3, inclusive. No agreement may limit the protection afforded to a teacher under § 13-43-6.5.

Section 44. For purposes of this Act, the term, school year, means the regular school term as referenced in § 13-26-2.

Section 45. That § 13-3-73 be repealed.

~~13-3-73. There is hereby created the teacher compensation assistance program within the Department of Education to provide funds to school districts for the purpose of assisting school districts with teacher compensation. School districts are eligible to receive funds from the teacher compensation assistance program based on their fall enrollment numbers. The department shall provide four-fifths of the funds for the teacher compensation assistance program to each participating school district. The Board of Education shall promulgate rules, pursuant to chapter 1-26, to create an oversight board appointed by the secretary of education for approval of applications as well as guidelines for district applications based on district instructional goals, market compensation or other specific district requirements as approved by the department. Participation in the program is discretionary. District applications shall be approved by the local board of education. The applications shall be reviewed by the teacher compensation assistance program oversight board and shall be recommended to the Board of Education for final approval.~~

~~The Legislature shall review the teacher compensation assistance program in 2012 to~~

1 ~~determine its effectiveness and to determine whether to continue the program.~~

2 Section 46. That § 13-3-74 be repealed.

3 ~~—13-3-74. The Teacher Compensation Assistance Program Oversight Board shall annually~~
4 ~~monitor the progress of participating school districts with their teacher compensation assistance~~
5 ~~plans, and submit its findings to the Board of Education.~~

6 Section 47. That § 13-3-74.1 be repealed.

7 ~~—13-3-74.1. There is hereby established the Teacher Compensation Assistance Program~~
8 ~~Advisory Council. The council shall be under the supervision of the Department of Education.~~
9 ~~The speaker of the House of Representative shall appoint three members of the House of~~
10 ~~Representatives to the council, including at least one member from each political party, and the~~
11 ~~president pro tempore of the Senate shall appoint three members of the Senate to the council,~~
12 ~~including at least one member from each political party. The Governor shall appoint the~~
13 ~~remaining members of the council, including at least one teacher, one school administrator, and~~
14 ~~one representative of a statewide education organization.~~

15 Section 48. That § 13-3-74.2 be repealed.

16 ~~—13-3-74.2. The council shall examine how teacher quality and teacher salaries in the state~~
17 ~~can be enhanced, and how the funds appropriated in fiscal year 2010 and in subsequent fiscal~~
18 ~~years by the state for the teacher compensation assistance program established in § 13-3-73 can~~
19 ~~best be utilized to assist in that effort. The council shall consider a variety of issues surrounding~~
20 ~~teachers including market compensation, a tiered licensure system, a system for evaluating~~
21 ~~teachers, mentoring and induction programs for teachers, and continuing contracts for teachers.~~

22 Section 49. That § 13-3-74.3 be repealed.

23 ~~—13-3-74.3. The council shall complete its work and the secretary of education shall provide~~
24 ~~its recommendations to the Governor and to the Executive Board of the Legislative Research~~

1 ~~Council no later than November 15, 2008.~~

2 Section 50. That § 13-3-75 be repealed.

3 ~~—13-3-75. The South Dakota Board of Education shall promulgate rules pursuant to chapter~~
4 ~~1-26 establishing the application process; application timelines; the guidelines for district~~
5 ~~applications based on school district instructional goals or market compensation; and a system~~
6 ~~to monitor the progress of participating school districts with their compensation assistance plans~~
7 ~~and to ensure that each participating school district is complying with the plan as submitted to~~
8 ~~the board.~~

9 Section 51. That § 13-3-83.1 be repealed.

10 ~~—13-3-83.1. Once all the school districts with approved applications have received their~~
11 ~~funding pursuant to § 13-3-73, the Department of Education may set aside from any funds~~
12 ~~remaining, a sum not to exceed one hundred thousand dollars from the teacher compensation~~
13 ~~assistance program appropriation for the purpose of providing grants to educational cooperatives~~
14 ~~and multi-district centers that employ teachers for public schools. The South Dakota Board of~~
15 ~~Education may promulgate rules, pursuant to chapter 1-26, to establish the granting process.~~

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

804T0672

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED NO. **HB 1246** - 2/9/2012

Introduced by: Representatives Feinstein, Blake, Haggar, Hawley, Hickey, Iron Cloud III, Jensen, Jones, Lucas, Magstadt, Sly, Steele, and Stricherz and Senators Buhl and Schlekeway

1 FOR AN ACT ENTITLED, An Act to prohibit the use of bisphenol A in certain products.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Beginning July 1, 2013, no person or entity may sell, offer for sale, or distribute
4 in commerce in this state any reusable food or beverage container that contains bisphenol A that
5 is intended for use as a baby bottle or spill-proof cup used primarily by children under the age
6 of three.

7 Section 2. This Act does not apply to food or beverage containers intended for disposal after
8 initial use.



State of South Dakota

EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

385T0712

HOUSE JUDICIARY ENGROSSED NO. **HB 1254** 2/8/2012

Introduced by: Representatives Hunt, Brunner, Cronin, Greenfield, Haggar, Hansen (Jon), Hubbel, Jensen, Kloucek, Miller, Nelson (Stace), Olson (Betty), Sly, Stricherz, Van Gerpen, and Wick and Senators Kraus, Brown, Heineman, Hunhoff (Jean), Krebs, and Schlekeway

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the decision of a
2 pregnant mother considering termination of her relationship with her child by an abortion,
3 to establish certain procedures to insure that such decisions are voluntary, uncoerced, and
4 informed, and to revise certain causes of action for professional negligence relating to
5 performance of an abortion.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. That § 34-23A-53 be amended to read as follows:

8 34-23A-53. Terms as used in §§ 34-23A-53 to 34-23A-62, inclusive, mean:

9 (1) "Pregnancy help center," any entity whether it be a form of corporation, partnership,
10 or proprietorship, whether it is for profit, or nonprofit, that has as one of its principal
11 missions to provide education, counseling, and other assistance to help a pregnant
12 mother maintain her relationship with her unborn child and care for her unborn child,
13 which entity has a medical director who is licensed to practice medicine in the State



1 of South Dakota, or that it has a collaborative agreement with a physician licensed
2 in South Dakota to practice medicine to whom women can be referred, which entity
3 does not perform abortions and is not affiliated with any physician or entity that
4 performs abortions, and does not now refer pregnant mothers for abortions, and has
5 not referred any pregnant mother for abortions for the three-year period immediately
6 preceding July 1, 2011, and which are in compliance with the requirements of section
7 8 of this Act;

8 (2) ~~"Risk factor associated with abortion," any factor, including any physical,~~
9 ~~psychological, emotional, demographic, or situational factor, for which there is a~~
10 ~~statistical association with an increased risk of one or more complications associated~~
11 ~~with legal abortion, such that there is a less than five percent probability that the~~
12 ~~statistical association is due to sampling error. To be recognized as a risk factor~~
13 ~~associated with legal abortion, the statistical information must have been published~~
14 ~~in the English language, after 1972, in at least one peer-reviewed journal indexed by~~
15 ~~the search services maintained by the United States National Library of Medicine~~
16 ~~(PubMed or MEDLINE, or any replacement services subsequently established by the~~
17 ~~National Library) or in at least one peer-reviewed journal indexed by any search~~
18 ~~service maintained by the American Psychological Association (PsycINFO, or any~~
19 ~~replacement service) and the date of first publication must be not less than twelve~~
20 ~~months before the date of the initial consultation described in § 34-23A-56;~~

21 (3) ~~"Complications associated with abortion," any adverse physical, psychological, or~~
22 ~~emotional reaction, for which there is a statistical association with legal abortion,~~
23 ~~such that there is a less than five percent probability that the statistical association is~~
24 ~~due to sampling error. To be recognized as a complication associated with legal~~

1 ~~abortion, the statistical information must have been published in the English~~
2 ~~language, after 1972, in at least one peer-reviewed journal indexed by the search~~
3 ~~services maintained by the United States National Library of Medicine (PubMed or~~
4 ~~MEDLINE, or any replacement services subsequently established by the National~~
5 ~~Library) or in at least one peer-reviewed journal indexed by any search service~~
6 ~~maintained by the American Psychological Association (PsycINFO, or any~~
7 ~~replacement service) and the date of first publication must be not less than twelve~~
8 ~~months before the date of the initial consultation described in § 34-23A-56;~~

- 9 (4) ~~"Coercion," exists if the pregnant mother has a desire to carry her unborn child and~~
10 ~~give birth, but is induced, influenced, or persuaded to submit to an abortion by~~
11 ~~another person or persons against her desire. Such inducement, influence, or~~
12 ~~persuasion may be by use of, or threat of, force, or may be by pressure or intimidation~~
13 ~~effected through psychological means, particularly by a person who has a relationship~~
14 ~~with the pregnant mother that gives that person influence over the pregnant mother~~
15 is induced to consent to an abortion by any other person under circumstances, or in
16 such a manner, which deprives her from making a free decision or exercising her free
17 will.

18 Section 2. That § 34-23A-56 be amended to read as follows:

19 34-23A-56. No surgical or medical abortion may be scheduled except by a licensed
20 physician and only after the physician physically and personally meets with the pregnant mother,
21 consults with her, and performs an assessment of her medical and personal circumstances. Only
22 after the physician completes the consultation and assessment complying with the provisions
23 of §§ 34-23A-53 to 34-23A-62, inclusive, may the physician schedule a surgical or medical
24 abortion, but in no instance may the physician schedule such surgical or medical abortion to take

place in less than seventy-two hours from the completion of such consultation and assessment except in a medical emergency as set forth in § 34-23A-10.1 and subdivision 34-23A-1(5). No physician may have the pregnant mother sign a consent for the abortion on the day of this initial consultation. No physician may take a signed consent from the pregnant mother unless the pregnant mother is in the physical presence of the physician and except on the day the abortion is scheduled, and only after complying with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, as they pertain to the initial consultation, and only after complying with the provisions of subdivisions 34-23A-10.1(1) and (2). During the initial consultation between the physician and the pregnant mother, prior to scheduling a surgical or medical abortion, the physician shall:

(1) Do an assessment of the pregnant mother's circumstances to make a reasonable determination whether the pregnant mother's decision to submit to an abortion is the result of any coercion, ~~subtle or otherwise~~ or pressure from other persons. In conducting that assessment, the physician shall obtain from the pregnant mother the age or approximate age of the father of the unborn child, and the physician shall ~~determine~~ consider whether any disparity in the age between the mother and father is a factor ~~in creating an~~ when determining whether the pregnant mother has been subjected to pressure, undue influence, or coercion;

(2) Provide the written disclosure required by subdivision 34-23A-10.1(1) and discuss them with her to determine that she understands them;

(3) Provide the pregnant mother with the names, addresses, and telephone numbers of all pregnancy help centers that are registered with the South Dakota Department of Health pursuant to §§ 34-23A-53 to 34-23A-62, inclusive, and provide her with written instructions that set forth the following:

(a) That prior to the day of any scheduled abortion the pregnant mother must have

1 a consultation at a pregnancy help center at which the pregnancy help center
2 shall inform her about what education, counseling, and other assistance is
3 available to help the pregnant mother keep and care for her child, and have a
4 private interview to discuss her circumstances that may subject her decision
5 to coercion;

6 (b) That prior to signing a consent to an abortion, the physician shall first obtain
7 from the pregnant mother, a written statement that she obtained a consultation
8 with a pregnancy help center, which sets forth the name and address of the
9 pregnancy help center, the date and time of the consultation, and the name of
10 the counselor at the pregnancy help center with whom she consulted;

11 (4) Conduct an assessment of the pregnant mother's health and circumstances to
12 determine if any of the following preexisting risk factors associated with abortion
13 adverse psychological outcomes following an abortion are present in her case;
14 completing a form which for each factor reports whether the factor is present or not;

15 (a) Coercion;

16 (b) Pressure from others to have an abortion;

17 (c) The pregnant mother views an abortion to be in conflict with her personal or
18 religious values;

19 (d) The pregnant mother is ambivalent about her decision to have an abortion, or
20 finds the decision of whether to have an abortion difficult and she has a high
21 degree of decisional distress;

22 (e) That the pregnant mother has a commitment to the pregnancy or prefers to
23 carry the child to term;

24 (f) The pregnant mother has a medical history that includes a pre-abortion mental

1 health or psychiatric problem; and

2 (g) The pregnant mother is twenty-two years old or younger.

3 The physician making the assessment shall record in the pregnant mother's medical
4 records, on a form created for such purpose, each of the risk factors associated with
5 adverse psychological outcomes following an abortion listed in this subdivision that
6 are present in her case and which are not present in her case;

7 (5) ~~Discuss with the pregnant mother the results of the assessment for risk factors,~~
8 ~~reviewing with her the form and its reports with regard to each factor listed~~ The
9 ~~physician shall identify for the pregnant mother and explain each of the risk factors~~
10 associated with adverse psychological outcomes following an abortion listed in
11 subdivision (4) which are present in her case;

12 (6) ~~In the event that any risk factor is determined to be present, discuss with the pregnant~~
13 ~~mother, in such manner and detail as is appropriate so that the physician can certify~~
14 ~~that the physician has made a reasonable determination that the mother understands~~
15 ~~the information, all material information about any complications associated with the~~
16 ~~risk factor, and to the extent available all information about the rate at which those~~
17 ~~complications occurs both in the general population and in the population of persons~~
18 ~~with the risk factor~~ The physician shall advise the pregnant mother of each risk factor
19 associated with adverse psychological outcomes following an abortion listed in
20 subdivision 34-23A-56(4) which the physician determines are present in her case and
21 shall discuss with the pregnant mother, in such a manner and detail as is appropriate,
22 so that the physician can certify that the physician has made a reasonable
23 determination that the pregnant mother understands the information imparted, all
24 material information about the risk of adverse psychological outcomes known to be

1 associated with each of the risk factors found to be present;

2 (7) In the event that no risk factor is determined to be present, the physician shall include
3 in the patient's records a statement that the physician has discussed the information
4 required by the other parts of this section and that the physician has made a
5 reasonable determination that the mother understands the information in question;

6 (8) Records of the assessments, forms, disclosures, and instructions performed and given
7 pursuant to this section shall be prepared by the physician and maintained as a
8 permanent part of the pregnant mother's medical records.

9 Section 3. That § 34-23A-57 be amended to read as follows:

10 34-23A-57. On the day on which the abortion is scheduled, no physician may take a consent
11 for an abortion nor may the physician perform an abortion, unless ~~the physician has fully~~
12 ~~complied with~~ the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, have been met, and the
13 physician first obtains from the pregnant mother, a written, signed statement setting forth all
14 information required by subsection 34-23A-56(3)(b). The written statement signed by the
15 pregnant mother shall be maintained as a permanent part of the pregnant mother's medical
16 records. Only the physician who meets with and consults with the pregnant mother pursuant to
17 § 34-23A-56 can take her consent and perform her abortion unless serious unforeseen
18 circumstances prevent that physician from taking the consent and performing the abortion.

19 Section 4. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 On or before January 2, 2013, each pregnancy help center which has been placed on the
22 registry of pregnancy help centers maintained by the Department of Health before January 1,
23 2012, as a condition to remain on the state registry of pregnancy help centers, shall submit a
24 supplemental affidavit that certifies that:

(1) It has available either on staff, or pursuant to a collaborative agreement, a licensed counselor, or licensed psychologist, or licensed certified social worker, or licensed nurse, or licensed marriage and family therapist, or physician, to provide the counseling related to the assessment for coercion and the associated imparting of information described in §§ 34-23A-53 to 34-23A-62, inclusive; and

(2) It shall strictly adhere to the confidentiality requirements set forth in §§ 34-23A-53 to 34-23A-62, inclusive.

Section 5. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any pregnancy help center which has been placed on the registry of pregnancy help centers maintained by the Department of Health before January 1, 2012, shall remain on the registry of the Department of Health and is eligible to provide the counseling and interviews described in §§ 34-23A-53 to 34-23A-62 for pregnancy help centers until January 1, 2013. Thereafter, each pregnancy help center shall remain on the state registry of the Department of Health and maintain its eligibility to provide the counseling and interviews by submitting to the Department of Health the supplemental affidavit provided for in section 4 of this Act.

Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any pregnancy help center which has not been placed on the registry of pregnancy help centers maintained by the Department of Health before January 1, 2012, which submits a written request or application to be listed on the state registry of pregnancy help centers, in order to be included on the registry, shall submit to the Department of Health an affidavit that certifies all of the information required by § 34-23A-58 as well as the information required by section 4 of this Act.

Section 7. That § 34-23A-59 be amended to read as follows:

34-23A-59. A pregnancy help center ~~consulted by a pregnant mother considering consenting to an abortion, as a result of the provisions of §§ 34-23A-53 to 34-23A-62, inclusive,~~
consultation required by this Act shall be implemented as follows:

(1) The pregnancy help center shall be permitted to interview the pregnant mother to determine whether the pregnant mother has been subject to any coercion to have an abortion, or is being pressured into having an abortion, and shall be permitted to inform the pregnant mother in writing or orally, or both, what counseling, education, and assistance that is available to the pregnant mother to help her maintain her relationship with her unborn child and help her care for the child both through the pregnancy help center or any other organization, faith-based program, or governmental program. The pregnancy help center may, if it deems it appropriate, discuss matters pertaining to adoption;

(2) During the consultation interviews provided for by §§ 34-23A-53 to 34-23A-62, inclusive, ~~the no pregnancy help centers, their agents and employees center, its agents or employees,~~ may ~~not~~ discuss with ~~the~~ any pregnant ~~mothers~~ mother religion or religious beliefs, either of the mother or the counselor, unless the pregnant mother consents in writing. ~~The pregnancy help center may, if it deems it appropriate, discuss matters pertaining to adoption;~~

(3) The pregnancy help center is under no obligation to communicate with the abortion provider in any way, and is under no obligation to submit any written or other form of confirmation that the pregnant mother consulted with the pregnancy help center. The pregnancy help center may voluntarily provide a written statement of assessment to the abortion provider, whose name the woman shall give to the pregnancy help

center, if the pregnancy help center obtains information that indicates that the pregnant mother has been subjected to coercion or that her decision to consider an abortion is otherwise not voluntary or not informed. The physician shall make the physician's own independent determination whether or not a pregnant mother's consent to have an abortion is voluntary, uncoerced, and informed before having the pregnant mother sign a consent to an abortion. The physician shall review and consider any information provided by the pregnancy help center as one source of information, which in no way binds the physician, who shall make an independent determination consistent with the provisions of §§ 34-23A-53 to 34-23A-62, inclusive, the common law requirements, and accepted medical standards;

(4) Any written statement or summary of assessment prepared by the pregnancy help center as a result of counseling of a pregnant mother as a result of the procedures created by §§ 34-23A-53 to 34-23A-62, inclusive, may be forwarded by the pregnancy help center, in its discretion, to the abortion physician. If forwarded to the physician, the written statement or summary of assessment shall be maintained as a permanent part of the pregnant mother's medical records. Other than forwarding such documents to the abortion physician, no information obtained by the pregnancy help center from the pregnant mother may be released, without the written signed consent of the pregnant mother or unless the release is in accordance with federal, state, or local law.

Nothing in §§ 34-23A-53 to 34-23A-62, inclusive, may be construed to impose any duties or liability upon a pregnancy help center.

Section 8. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any pregnancy help center listed on the Department of Health registry of pregnancy help centers prior to January 1, 2012, shall, beginning on January 1, 2013, have available either on staff or pursuant to a collaborative agreement, a licensed counselor, or licensed psychologist, or licensed nurse, or licensed marriage and family therapist, or a licensed physician to meet privately with the pregnant mother to provide the counseling and meeting required by this Act.

Any pregnancy help center placed on the state registry on or after January 1, 2012, shall have one or more such licensed professionals available on staff or pursuant to collaborative agreement for such purposes beginning on January 1, 2012.

Section 9. That chapter 34-23A be amended by adding thereto a NEW SECTION to read as follows:

Any person who knowingly and intentionally releases any information obtained during any consultations resulting from this Act, under circumstances not in accord with the confidentiality provisions required by this Act, is guilty of a Class 2 misdemeanor. Such a conviction of a Class 2 misdemeanor shall be reported to any agency or board responsible for licensing or certifying the persons who conducted the counseling required by this Act.

Section 10. That § 34-23A-61 be amended to read as follows:

34-23A-61. In any civil action presenting a claim arising from a failure to comply with any of the provisions of this chapter, the following shall apply:

(1) The failure to comply with the requirements of this chapter relative to obtaining consent for the abortion shall create a rebuttable presumption that if the pregnant mother had been informed or assessed in accordance with the requirements of this chapter, she would have decided not to undergo the abortion;

(2) If the trier of fact determines that the abortion was the result of coercion, and it is determined that if the physician acted prudently, the physician would have learned

1 of the coercion, there is a nonrebuttable presumption that the mother would not have
2 consented to the abortion if the physician had complied with the provisions of §§ 34-
3 23A-53 to 34-23A-62, inclusive;

4 (3) If evidence is presented by a defendant to rebut the presumption set forth in
5 subdivision (1), then the finder of fact shall determine whether this particular mother,
6 if she had been given all of the information a reasonably prudent patient in her
7 circumstance would consider significant, as well as all information required by
8 §§ 34-23A-53 to 34-23A-62, inclusive, to be disclosed, would have consented to the
9 abortion or declined to consent to the abortion based upon her personal background
10 and personality, her physical and psychological condition, and her personal
11 philosophical, religious, ethical, and moral beliefs;

12 (4) The pregnant mother has a right to rely upon the abortion doctor as her source of
13 information, and has no duty to seek any other source of information, other than from
14 a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57, prior to
15 signing a consent to an abortion;

16 (5) No patient or other person responsible for making decisions relative to the patient's
17 care may waive the requirements of this chapter, and any verbal or written waiver of
18 liability for malpractice or professional negligence arising from any failure to comply
19 with the requirements of this chapter is void and unenforceable.